IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 143 OF 1989

The Commissioner of Income-tax,
Bombay City-IV, Bombay. ...Applicant
V/s.
M/s.Hind Filters P.Ltd. ...Respondent

Mr.Ashok Kotangle for Applicant.
Mr.J.D. Mistry i/b. Rajesh Shah & Co. for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.
DATED : JULY 5, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court :-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in computing the disallowance of the remuneration of the employee directors, the provisions of section 40(c) and not those of section 40A(5) of the Act, were applicable?

2. Whether on the facts and in the

circumstances of the case, the Tribunal was right in law in holding that the notional value of the company's own house, computed on the basis of the cost of residential flat, would not be considered as part of perquisite for the purpose of sec.40(c)/40A(5) of the I.T.Act?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the payment of guarantee commission of Rs.16,788/- would not be part of the remuneration for the purpose of disallowance under section 40(c)/40A(5)? "

2. So far as first question is concerned, the same has already been answered by the Division Bench of this Court in the case of **C.I.T. V/s. Hico Products Pvt.Ltd. (No.1), (1993) 201 I.T.R. 567** in favour of the assessee and against the revenue.

3. So far as second question is concerned, no doubt it involves interpretation of section 40(c) (unamended)

of the Income Tax Act as held the field at the relevant assessment year 1980-81. However, the tax impact would hardly be worth consideration. In this view of the matter, considering the minimal tax impact, the same need not to be answered in view of our Judgment dated 1st July, 2005, passed in Income Tax Reference No.397 of 1988 **(C.I.T. Vs. M/s.Pithwa Engg.Works)**, wherein we have relied upon decision of this Court in the case of **C.I.T. vs. Camco Colour Co. (2002) 254 ITR 565**. In this view of the matter, we do not think it necessary to answer question no.2 referred to this Court, for the assessment year 1980-81, having negligible tax effect.

4. So far as third question is concerned, the same is also covered by the Judgment of this Court in the case of **Commissioner of Income Tax V/s. Trade Wings Ltd. (2000) 241 ITR 198.** Accordingly, Question Nos.1 and 3 are answered in affirmative in favour of the assessee and against the revenue.

5. For the reasons recorded herein, the reference, accordingly, stands disposed of with no order as to

costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**